

# EXHIBIT D

- JAMES MANNING -

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

----- X

THERESA SWEET, et al., on behalf

of themselves and all others

similarly situated,

Plaintiffs,

vs.

ELISABETH DEVOS, in her official

capacity as Secretary of the

United States Department of

Education, et al.

Defendants.

----- X

DATE: December 17, 2020

TIME: 9:36 a.m.

VIDEOTAPED VIDEOCONFERENCE DEPOSITION

OF JAMES MANNING, pursuant to Agreement, before

Hope Menaker, a Shorthand Reporter and Notary

Public of the State of New York.

12/17/2020

66 to 69

<p style="text-align: right;">Page 66</p> <p>1 - JAMES MANNING -</p> <p>2 A. I -- I briefed her that that was the</p> <p>3 determination after review by the Office of</p> <p>4 General Counsel. There was no option and I -- I</p> <p>5 recommended she sign.</p> <p>6 Q. That she sign what?</p> <p>7 A. The discharge of those 16,000 loans</p> <p>8 -- \$200 billion worth of loans.</p> <p>9 Q. And was that an actual document</p> <p>10 discharging the loans?</p> <p>11 A. She signed recognizing that, that her</p> <p>12 -- her action authorized the process to go</p> <p>13 forward.</p> <p>14 Q. And were you involved in drafting the</p> <p>15 written document for that action?</p> <p>16 A. I was not.</p> <p>17 Q. Did you give her, the Secretary, any</p> <p>18 written communication about the action?</p> <p>19 A. I believe I may have. I expect I</p> <p>20 did, yes.</p> <p>21 Q. Why don't we look at Tab 11 in your</p> <p>22 documents and this was previously submitted as</p> <p>23 Exhibit 7 in the Jones deposition.</p> <p>24 (Whereupon, Exhibit 7, having been</p> <p>25 previously marked, was tendered to the</p>	<p style="text-align: right;">Page 68</p> <p>1 - JAMES MANNING -</p> <p>2 A. I have no recollection of who gave me</p> <p>3 the draft.</p> <p>4 Q. Do you know if this resulted from the</p> <p>5 borrower defense Review Panel?</p> <p>6 A. I do not. I think that I would say</p> <p>7 that -- so the paragraph that reads, "We</p> <p>8 established a review panel consisting of Joe</p> <p>9 Connolly, Lynn Mahaffy -- we established a review</p> <p>10 panel consisting of Joe Connolly, Lynn Mahaffy,</p> <p>11 Phil Rosenfelt, Justin Riemer and myself who</p> <p>12 examined the claims and background explanation and</p> <p>13 made recommendations on how to resolve the pending</p> <p>14 claims and proceed in the future."</p> <p>15 So this memo preparation was made in</p> <p>16 and amongst the group of people represented here.</p> <p>17 Q. And was this the action you referred</p> <p>18 to previously of the -- of Secretary DeVos</p> <p>19 authorizing the discharge of approximately 16,000</p> <p>20 borrower defense claims?</p> <p>21 A. Yes. It was --</p> <p>22 Q. I'm sorry, go ahead.</p> <p>23 A. The answer to what you said so far is</p> <p>24 yes. It was a recommendation to the Secretary</p> <p>25 signed by me to "proceed with discharge for direct</p>
<p style="text-align: right;">Page 67</p> <p>1 - JAMES MANNING -</p> <p>2 witness for identification.)</p> <p>3 Q. And I'll ask you to just skip past</p> <p>4 the first page that says "Exhibit 7" because that</p> <p>5 was just used to get it into the court file; and</p> <p>6 if you turn to the second actual page of the</p> <p>7 document, do you recognize this document?</p> <p>8 A. Uh-huh.</p> <p>9 Q. And can you tell me what it is?</p> <p>10 A. This is a memo from me to the</p> <p>11 Secretary.</p> <p>12 MR. JARAMILLO: And I'm not sure that</p> <p>13 I did this, but we should mark this -- I'm</p> <p>14 sorry, we don't have to mark this. Strike</p> <p>15 that.</p> <p>16 Q. Did you write this memo, Mr. Manning?</p> <p>17 A. I signed it. I don't believe that I</p> <p>18 was the author.</p> <p>19 Q. Do you know who authored it?</p> <p>20 A. Probably a committee.</p> <p>21 Q. And what committee would that be?</p> <p>22 A. Oh, I, I -- I don't know. I would</p> <p>23 say that I, you know, ultimately read it and sent</p> <p>24 it forward.</p> <p>25 Q. Who gave you the draft of it?</p>	<p style="text-align: right;">Page 69</p> <p>1 - JAMES MANNING -</p> <p>2 and non-direct loans for all impacted borrowers</p> <p>3 direct for U.S. or in the CFO's Internal Control</p> <p>4 Unit to set up interim procedures to process</p> <p>5 claims until new borrower defense regulations are</p> <p>6 operable and take effect. Proceeding with</p> <p>7 requesting OIG launch a review of the borrower</p> <p>8 defense program."</p> <p>9 Q. And you're reading from Page 4 of</p> <p>10 this exhibit?</p> <p>11 A. Correct.</p> <p>12 Q. And you see that Secretary DeVos</p> <p>13 signed it and checked the -- the line that says</p> <p>14 "Approved"?</p> <p>15 A. I do.</p> <p>16 Q. And this is a document that shows</p> <p>17 that she approved the action listed in the</p> <p>18 recommendation?</p> <p>19 A. It is.</p> <p>20 Q. And you see your comment at the</p> <p>21 bottom that says "With extreme displeasure"?</p> <p>22 A. I do.</p> <p>23 Q. After, did you -- do you recall</p> <p>24 seeing that after she signed this document?</p> <p>25 A. Well, I -- I don't recall that,</p>

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70 to 73

<p style="text-align: right;">Page 70</p> <p>1 - JAMES MANNING -</p> <p>2 but --</p> <p>3 Q. After she signed this document, did</p> <p>4 you talk to her about her extreme displeasure?</p> <p>5 MR. MERRITT: Objection, asked and</p> <p>6 answered.</p> <p>7 Q. You can answer.</p> <p>8 A. Well, I know she was not happy about</p> <p>9 it and I know that she would have preferred that</p> <p>10 the action was taken on fully under Trump's</p> <p>11 administration, but she -- she knew she had an</p> <p>12 obligation and she signed it and was not happy</p> <p>13 about it, the way it had been handled up to then.</p> <p>14 Q. And after she signed the document, do</p> <p>15 you know if the 16,000 applications were actually</p> <p>16 discharged?</p> <p>17 A. Yes, they were.</p> <p>18 Q. Do you know when they were</p> <p>19 discharged?</p> <p>20 A. I do not.</p> <p>21 Q. Do you have an estimate as to when</p> <p>22 they were discharged?</p> <p>23 A. Not long after she signed this.</p> <p>24 Q. And were they all discharged with a</p> <p>25 hundred percent relief?</p>	<p style="text-align: right;">Page 72</p> <p>1 - JAMES MANNING -</p> <p>2 discussion about moving forward with the</p> <p>3 methodology and getting to a point where we would</p> <p>4 be able to move forward, as I said before, fairly</p> <p>5 for the borrower and the taxpayer by considering</p> <p>6 the harm that was done to student borrowers and</p> <p>7 providing relief at an appropriate level that</p> <p>8 ultimately was between a hundred percent and ten</p> <p>9 percent.</p> <p>10 Q. To your recollection, when was that</p> <p>11 new methodology put into effect?</p> <p>12 A. Oh, I'm -- I'm trying to recall. I</p> <p>13 can't remember specifically when it was put into</p> <p>14 effect, you know, obviously it would take</p> <p>15 some -- some time to stand up. It was in</p> <p>16 effect -- started being worked on through '17.</p> <p>17 You know, it was in effect for a</p> <p>18 certain period of time before it was put aside by</p> <p>19 the court in 2018. I, I -- I can't remember the</p> <p>20 specific start date in terms of when it was up for</p> <p>21 operation.</p> <p>22 Q. Until it was up in operation, is it</p> <p>23 true that the Department did not issue any other</p> <p>24 final borrower defense decisions except for the</p> <p>25 approximately 16,000 that were approved by the</p>
<p style="text-align: right;">Page 71</p> <p>1 - JAMES MANNING -</p> <p>2 A. That's my understanding.</p> <p>3 Q. During the time period in which the</p> <p>4 borrower defense Review Panel was -- was meeting</p> <p>5 to evaluate the borrower defense program, did FSA</p> <p>6 issue any decisions on borrower defense</p> <p>7 applications?</p> <p>8 A. I don't recall if they issued any or</p> <p>9 not. They certainly were receiving applications</p> <p>10 and were making judgments whether they were</p> <p>11 acceptable for consideration or not, but I don't</p> <p>12 recall that. I --</p> <p>13 Q. Do you recall there being -- sorry,</p> <p>14 go ahead. I talked over you.</p> <p>15 A. That's okay. Sorry. I don't recall</p> <p>16 that there were any that were finally fully</p> <p>17 settled beyond these.</p> <p>18 Q. Was there a decision to put a pause</p> <p>19 on issuing final decisions during the time period</p> <p>20 of the borrower defense Review Panel?</p> <p>21 A. During a period that involved the</p> <p>22 panel? I -- I don't recall a -- a formal</p> <p>23 decision, but -- I don't -- I don't recall a</p> <p>24 decision that ordered that.</p> <p>25 I think there was certainly</p>	<p style="text-align: right;">Page 73</p> <p>1 - JAMES MANNING -</p> <p>2 Secretary in the memo we just looked at?</p> <p>3 A. I don't specifically recall, but I</p> <p>4 expect that it's true though.</p> <p>5 Q. And this memo, as you read, did</p> <p>6 authorize the CFO's Internal Control Unit to set</p> <p>7 up interim procedures to process claims, right?</p> <p>8 MR. MERRITT: Objection, ambiguous.</p> <p>9 What -- what document?</p> <p>10 MR. JARAMILLO: The document we</p> <p>11 looked at which was the May 4th, 2017 memo</p> <p>12 that's Exhibit 7 in this case.</p> <p>13 Q. Tab 11 for you, Mr. Manning.</p> <p>14 A. Yes. That's Page 4 of Exhibit 7; is</p> <p>15 that right.</p> <p>16 Q. Yes, the authorization of the setting</p> <p>17 up of interim procedures.</p> <p>18 A. Yes, I see what you're saying there.</p> <p>19 "Direct OUS and the CFO's Internal Control Unit"</p> <p>20 -- sorry, I'll read the whole thing so you have</p> <p>21 it.</p> <p>22 "Proceed with discharge for direct</p> <p>23 and non-direct loans for all impacted borrowers.</p> <p>24 Direct OUS and the CFO's Internal Control Unit to</p> <p>25 set up interim procedures to process claims until</p>

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<p style="text-align: right;">Page 122</p> <p>1 - JAMES MANNING -</p> <p>2 Secretary has the authority to give a part in the</p> <p>3 whole in that -- in principle, but again I'd want</p> <p>4 guidance from general counsel at the Department</p> <p>5 before going forward but --</p> <p>6 Q. Would anyone else besides Secretary</p> <p>7 DeVos have authority to issue such a decision?</p> <p>8 A. I don't know.</p> <p>9 Q. Would you have authority to issue</p> <p>10 such a decision?</p> <p>11 A. I would have to see the decisions</p> <p>12 like in front of me for consideration. I --</p> <p>13 Q. Well, we don't -- I'm not aware of</p> <p>14 such a decision document per se, but there was</p> <p>15 obviously as you've seen a stoppage in the</p> <p>16 issuance of borrower defense claims and for an</p> <p>17 extended period of time.</p> <p>18 A. Right.</p> <p>19 Q. So you would expect that decision to</p> <p>20 come from Department leadership, correct?</p> <p>21 A. I would expect that's correct, but I</p> <p>22 don't know where that decision ultimately came</p> <p>23 from.</p> <p>24 Q. Would you have authority to issue</p> <p>25 such a decision?</p>	<p style="text-align: right;">Page 124</p> <p>1 - JAMES MANNING -</p> <p>2 briefed by others, including general counsel on an</p> <p>3 issue before an action like that was taken.</p> <p>4 Q. But she would have the authority to</p> <p>5 take the action after that briefing, correct?</p> <p>6 A. I expect that's correct. I --</p> <p>7 Q. Did you ever at any time issue an</p> <p>8 order regarding borrower defense?</p> <p>9 MR. MERRITT: Objection, vague.</p> <p>10 Q. Did you ever issue a decision</p> <p>11 regarding borrower defense in your tenure at the</p> <p>12 Department of Education?</p> <p>13 A. Did I have --</p> <p>14 MR. MERRITT: Objection, vague.</p> <p>15 Q. You can answer the question, Mr.</p> <p>16 Manning, and I'll repeat it. Did you ever at any</p> <p>17 time issue a decision regarding borrower defense?</p> <p>18 A. A specific decision?</p> <p>19 Q. Any decision.</p> <p>20 A. I don't recall.</p> <p>21 Q. But you might have issued a decision</p> <p>22 about borrower defense, but you just don't recall;</p> <p>23 is that right?</p> <p>24 A. It's possible.</p> <p>25 Q. I want you to turn to Tab 16, if you</p>
<p style="text-align: right;">Page 123</p> <p>1 - JAMES MANNING -</p> <p>2 A. I would have -- if I had that option</p> <p>3 in front of me, I would have discussed so with the</p> <p>4 general counsel's office to clarify that because</p> <p>5 it's not clear to me.</p> <p>6 Q. But you -- in consultation with the</p> <p>7 Office of General Counsel, you would have the</p> <p>8 authority to issue such a decision or not?</p> <p>9 A. I, I -- I don't know. I'd have to</p> <p>10 have their counsel advise me to that. I don't</p> <p>11 know.</p> <p>12 Q. But one thing that's absolutely clear</p> <p>13 is that Secretary DeVos would have that</p> <p>14 decision-making authority, correct?</p> <p>15 MR. MERRITT: Objection,</p> <p>16 mischaracterization of prior testimony.</p> <p>17 Q. I'm just asking the question: One</p> <p>18 thing that's clear, Mr. Manning, is that of</p> <p>19 anybody at the Department of Education, Secretary</p> <p>20 DeVos would have the authority to issue a decision</p> <p>21 that would require stopping the issuance of</p> <p>22 borrower defense approvals and denials; is that</p> <p>23 right?</p> <p>24 A. I expect the Secretary has that</p> <p>25 authority and so I would expect that she'd be</p>	<p style="text-align: right;">Page 125</p> <p>1 - JAMES MANNING -</p> <p>2 could. This was previously marked as Exhibit 12</p> <p>3 and it appears to be a PowerPoint presentation</p> <p>4 that's titled "Borrower Defense to Repayment</p> <p>5 August 21, 2019."</p> <p>6 (Whereupon, Exhibit 12, having been</p> <p>7 previously marked, was tendered to the</p> <p>8 witness for identification.)</p> <p>9 Q. And I recognize, Mr. Manning, that</p> <p>10 this postdates your tenure at the Department, but</p> <p>11 there is something in this document that I want to</p> <p>12 ask you about.</p> <p>13 A. Okay, fair enough. I have it.</p> <p>14 Q. Okay. Thank you, Mr. Manning. If</p> <p>15 you could turn -- the page numbers are located in</p> <p>16 the lower left-hand corner.</p> <p>17 A. I see them. What number?</p> <p>18 Q. I want to go to Page 6 or Slide 6.</p> <p>19 A. Okay.</p> <p>20 Q. And there's a question on top "Why</p> <p>21 are BD applications on Hold" and for approvals it</p> <p>22 says, "'Manriquez' tier relief methodology for CCI</p> <p>23 subject to injunction (as of May, 2018) and no</p> <p>24 alternative methodology available."</p> <p>25 Do you have any recollection of that</p>

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<p style="text-align: right;">Page 146</p> <p>- JAMES MANNING -</p> <p>Clinton, but I was a career officer, a career member of the senior executive service. At the beginning of my service, I was in the Career Foreign Service.</p> <p>Q. And immediately prior to joining the Trump transition team, were you self-employed doing consulting work?</p> <p>A. Yes.</p> <p>Q. So what were the types of clients that you had?</p> <p>MR. MERRITT: Objection, it's beyond the scope of the discovery that's been authorized.</p> <p>Q. Did you have any higher education clients?</p> <p>A. What's your definition of higher education?</p> <p>Q. How about student loan guarantors?</p> <p>A. I did work for Strata Education, you know, a former student loan guarantee agency that's no longer a guarantee agency.</p> <p>Q. Anybody else?</p> <p>A. Nobody else in higher education.</p> <p>Q. No -- no institutions of higher</p>	<p style="text-align: right;">Page 148</p> <p>- JAMES MANNING -</p> <p>connection with the Penn Hill Group after leaving the Department of Education?</p> <p>MR. MERRITT: Objection, and I'm going to object to that question, beyond the scope. This has gone on long enough. I'm going to instruct the witness not to answer to enforce a court order limitation on discovery.</p> <p>Q. Have you done any work after leaving the administration related to the discharge of student loans?</p> <p>MR. MERRITT: Objection. Beyond the scope. I instruct not to answer to protect the limitation, the court ordered limitation on discovery.</p> <p>Q. Have you done any the work on behalf of institutions of higher education as in your -- in your consulting work after leaving the Trump Administration?</p> <p>MR. MERRITT: Objection to this line of questioning, we objected to it, beyond the scope of what the court authorized discovery on. Continue to instruct not to answer.</p> <p>MR. JARAMILLO: Well, I think it's --</p>
<p style="text-align: right;">Page 147</p> <p>- JAMES MANNING -</p> <p>education?</p> <p>A. That I worked for as a consultant?</p> <p>Q. Yes, prior to joining the Department or the Trump transition team.</p> <p>MR. MERRITT: I going to object to the scope of this line of questioning and how it's relevant to the discovery the court authorized.</p> <p>Q. You can answer the question. You mentioned Stratta Education. Was there any other higher education-related institution that you had as a client?</p> <p>A. No.</p> <p>Q. What about USA Funds?</p> <p>A. USA -- USA Funds was a pre -- Stratta was spun off from USA Funds. I did not work for you USA Funds.</p> <p>Q. Did any of your consulting work involve the discharge of federal student loans?</p> <p>MR. MERRITT: Objection, it's beyond the scope.</p> <p>Q. Your answer, sir?</p> <p>A. No.</p> <p>Q. And did you ever consult in</p>	<p style="text-align: right;">Page 149</p> <p>- JAMES MANNING -</p> <p>I think it's relevant. It goes to credibility and it goes to bias.</p> <p>MR. MERRITT: Was that one of the topics the court authorized discovery on?</p> <p>MR. JARAMILLO: That's always an issue when you're talking about a discovery. I don't think Judge Alsup would disagree with that.</p> <p>MR. MERRITT: And this an ATA case and as you just said the Judge also recognized, a discovery of the agency is favored, that's the presumption. He obviously authorized discovery in this case, but it must be limited to the topics he actually set forth and this is not related to any of the -- the topics described -- (unintelligible crosstalk).</p> <p>Q. Did your work at the President Forum involve any work for non-for-profit schools?</p> <p>MR. MERRITT: Objection, still beyond the scope.</p> <p>Q. Does your work at President Forum, Mr. Manning, involve any discharge of federal student loans?</p>

<p style="text-align: right;">Page 150</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>MR. MERRITT: Objection, beyond the scope of the court-authorized discovery. I instruct the witness not to answer to protect the limitation ordered by the court.</p> <p>Q. After leaving the Trump Administration, Mr. Manning, did you have any discussions with anybody at the Department of Education regarding borrower defense issues?</p> <p>A. After I left the Trump Administration?</p> <p>Q. Yes, sir.</p> <p>A. Did I have any conversations with people at the Department about borrower defense, is that what you said? Repeat the question, please.</p> <p>Q. That's it. You got it, Mr. Manning. That's -- that's the question. You repeated it accurately.</p> <p>A. After I left the Trump Administration, did I have conversations with -- none that I recall.</p> <p>Q. I would like you to turn to Tab 12 and this is a document that we need to mark as the next exhibit, which I believe is 34.</p>	<p style="text-align: right;">Page 152</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>complete document?</p> <p>Q. Well, sir, I -- thanks for pointing that out. I think that we just excerpted here your -- your remarks as they appear in this transcript.</p> <p>A. Okay.</p> <p>Q. If you could turn to Page 8 on Line 11. Can you read for me the second beginning with "As you know"?</p> <p>A. Yes. "As you know, the borrower defense regulations enacted in 2016 have been delayed and so the Department has and will continue to consider claims under the regulatory status quo which assesses a claim under applicable state law and commits to the Secretary's discretion how to fashion relief"</p> <p>Q. And do you recall making that statement to this committee?</p> <p>A. Yes.</p> <p>Q. I would like you to turn to Page 10.</p> <p>A. Okay.</p> <p>Q. Can you read the sentence beginning at Line 5.</p> <p>A. "Throughout the winter and early</p>
<p style="text-align: right;">Page 151</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>(Whereupon, Exhibit 34 was marked at this time.)</p> <p>Q. And this is a document that has on top "U.S. Department of Education Borrower Defenses and Financial Responsibility Negotiated Rulemaking Committee 2017-2018 Session 1."</p> <p>A. Yes.</p> <p>Q. Have you seen this document before, Mr. Manning?</p> <p>A. It looks like a transcript of the remarks I gave at the beginning of this session.</p> <p>Q. Have you seen it before?</p> <p>A. Have I seen this document before?</p> <p>Q. Yes, sir.</p> <p>A. In this form, not that I recall.</p> <p>Q. Okay. I want you to turn to Page 8, please.</p> <p>A. Happy to.</p> <p>Q. And I would like you to look at the sentence beginning in the middle of Line 11.</p> <p>A. Can I just point out, just for my own clarification, this document -- there's a couple of pages Number 1 and the back of the cover page is Number 7, 8, 9, 10. So is this -- is this a</p>	<p style="text-align: right;">Page 153</p> <p style="text-align: center;">- JAMES MANNING -</p> <p>spring, a team consisting of both career and non-career Department leadership evaluated the program and worked to implement controls and procedures for reviewing claims and processes for discharging loans for successful claimants."</p> <p>Q. And was that the Borrower Review Defense Panel that we discussed earlier?</p> <p>A. I believe so.</p> <p>Q. And what controls and procedures were implemented? You -- you say that they "worked to implement controls and procedures for reviewing claims and processes for discharging loans for successful claimants."</p> <p>Do you recall any more about those controls and procedures?</p> <p>A. Well, what came out of that was the establishment of the methodology.</p> <p>Q. Did anything else come out of that that was related to controls and procedures for reviewing claims and processes for discharging loans?</p> <p>A. I don't recall.</p> <p>Q. Can you look at -- on the same page, the sentence starting at Line 17.</p>

<p style="text-align: right;">Page 234</p> <p>1 - JAMES MANNING -</p> <p>2 A. I wasn't aware of it when it occurred</p> <p>3 that former Deputy Chief Enforcement Officer</p> <p>4 communicated to BDU not to submit additional</p> <p>5 claims.</p> <p>6 Q. Did you ever become aware of that</p> <p>7 communication?</p> <p>8 A. Apparently when I read this, I must</p> <p>9 have become aware of it, but I skimmed over it. I</p> <p>10 don't recall but --</p> <p>11 Q. Did you direct FSA's former Deputy</p> <p>12 Chief Enforcement Officer to communicate to BDU</p> <p>13 not to submit additional claims for approval?</p> <p>14 A. I don't remember anything like that.</p> <p>15 Q. Do you --</p> <p>16 MR. MERRITT: Joe, we -- oh, sorry.</p> <p>17 MR. JARAMILLO: Go ahead.</p> <p>18 MR. MERRITT: I was going to say</p> <p>19 we've gone for a little over an hour again.</p> <p>20 We missed our break window, sometime soon.</p> <p>21 MR. JARAMILLO: All right. Let's</p> <p>22 unpack this sentence a little bit and then</p> <p>23 we'll take our break. I don't think it will</p> <p>24 take that long.</p> <p>25 THE WITNESS: Sure.</p>	<p style="text-align: right;">Page 236</p> <p>1 - JAMES MANNING -</p> <p>2 Manning.</p> <p>3 So your answer is you don't know.</p> <p>4 You're telling me that as you sit here today you</p> <p>5 don't remember one way or another whether you</p> <p>6 directed FSA to stop issuing decisions for</p> <p>7 approval?</p> <p>8 A. I don't have any recollection of</p> <p>9 relaying that information to the former Deputy</p> <p>10 Chief Enforcement Officer to, to -- to relay; and</p> <p>11 if I had I -- I expect that I would remember that,</p> <p>12 but I have no recollection of doing anything like</p> <p>13 that. That's outside of a normal procedure.</p> <p>14 Q. Now, let's put aside the relaying</p> <p>15 information. I want to just back up because my</p> <p>16 question really was focused on whether you</p> <p>17 directed FSA to stop issuing decisions for</p> <p>18 approval.</p> <p>19 A. I --</p> <p>20 Q. Did you?</p> <p>21 A. I don't recall doing that, no, but I</p> <p>22 don't see that reference or inference being made</p> <p>23 here.</p> <p>24 Q. I'm not asking for an inference. I'm</p> <p>25 kind of backing up for now because I don't want to</p>
<p style="text-align: right;">Page 235</p> <p>1 - JAMES MANNING -</p> <p>2 MR. JARAMILLO: All right.</p> <p>3 Q. Do you have any idea who would have</p> <p>4 made a decision to communicate to the BDU not to</p> <p>5 submit additional claims for approval?</p> <p>6 A. I don't know. I can't tell from</p> <p>7 this. I -- I read this and --</p> <p>8 Q. At this time, sir. I'm just asking</p> <p>9 for your memory.</p> <p>10 A. Well, I, I, I -- I know, but I read</p> <p>11 this and the "FSA's former Deputy Chief</p> <p>12 Enforcement Officer communicated to the BDU not to</p> <p>13 submit additional claims." According to the</p> <p>14 director of BDU, FSA's former Deputy Chief</p> <p>15 Enforcement Officer communicated to the BDU not to</p> <p>16 submit additional claims for approval or to</p> <p>17 continue developing memoranda."</p> <p>18 It goes on, but the confusion for me</p> <p>19 here is that former Deputy Chief Enforcement</p> <p>20 Officer, I mean is -- is that Laura Kim? Is that</p> <p>21 who we're talking about, communicating to the --</p> <p>22 the BDU to Colleen Nevin not to submit additional</p> <p>23 claims? On whose authority was that? I don't</p> <p>24 know. I can't tell by reading this.</p> <p>25 Q. Those are precisely my questions, Mr.</p>	<p style="text-align: right;">Page 237</p> <p>1 - JAMES MANNING -</p> <p>2 get caught up in, in the -- you know -- in the</p> <p>3 relay of information.</p> <p>4 I just --- really just the important</p> <p>5 part of this for my purposes is to know whether</p> <p>6 you directed FSA to stop issuing decisions for</p> <p>7 approval and your answer was you don't recall; is</p> <p>8 that correct?</p> <p>9 A. I don't recall.</p> <p>10 Q. Could you have directed FSA to stop</p> <p>11 issuing decisions for approval?</p> <p>12 A. When are we talking about, what date?</p> <p>13 As what?</p> <p>14 Q. Any time -- any time in your tenure</p> <p>15 as Acting Undersecretary, could you have directed</p> <p>16 FSA to stop issuing decisions for approval?</p> <p>17 A. Well, would I have had the legal</p> <p>18 authority? I'm not -- it's not clear to me that I</p> <p>19 would have to do that and would have done that.</p> <p>20 Q. It's not clear to you whether you had</p> <p>21 the legal authority to do that?</p> <p>22 A. I would have to -- to consult with</p> <p>23 the attorneys at OGC to be clear on that.</p> <p>24 Q. Did you ever direct that no more</p> <p>25 decisions for borrower defense be issued?</p>



<p style="text-align: right;">Page 238</p> <p>1 - JAMES MANNING -</p> <p>2 A. I have no recollection of ever saying</p> <p>3 that.</p> <p>4 Q. Is that something that you would have</p> <p>5 had the authority to do?</p> <p>6 A. As I said, I would want to check with</p> <p>7 the OGC to confirm that before I made a statement</p> <p>8 like that.</p> <p>9 Q. Did you ever check with OGC about</p> <p>10 that issue?</p> <p>11 A. Not that I recall.</p> <p>12 Q. Did you ever check with anybody about</p> <p>13 that issue of being able to direct that no more</p> <p>14 decisions by borrower defense be issued?</p> <p>15 A. No, I don't remember.</p> <p>16 Q. And it's your testimony that within</p> <p>17 the department, it's office-of-the-general-counsel</p> <p>18 that would know whether or not you had the</p> <p>19 authority to do something like that?</p> <p>20 A. I think checking with the attorneys</p> <p>21 always a good thing to do at the Department of</p> <p>22 Education when you have a question about lawful</p> <p>23 authority.</p> <p>24 Q. Certainly Secretary DeVos would have</p> <p>25 authority to issue such a decision, correct?</p>	<p style="text-align: right;">Page 240</p> <p>1 - JAMES MANNING -</p> <p>2 MR. MERRITT: Objection, asked and</p> <p>3 answered.</p> <p>4 Q. You can answer, sir.</p> <p>5 A. I don't recall ever hearing Secretary</p> <p>6 DeVos say that.</p> <p>7 Q. And you don't recall anybody ever</p> <p>8 saying that Secretary DeVos issued such a</p> <p>9 decision?</p> <p>10 A. That -- I don't recall that.</p> <p>11 Q. You don't have any awareness that she</p> <p>12 issued such a decision?</p> <p>13 MR. MERRITT: Objection, asked and</p> <p>14 answered several times.</p> <p>15 Q. Do you have any awareness, sir, as</p> <p>16 you sit here today that she issued such a</p> <p>17 decision?</p> <p>18 A. Awareness as I sit here today?</p> <p>19 Q. Yes, sir.</p> <p>20 A. Do you have a document here to show</p> <p>21 me this and I can see --</p> <p>22 Q. I'm just asking whether you have any</p> <p>23 awareness, you can tell me --</p> <p>24 A. No, I don't --</p> <p>25 Q. You can tell me --</p>
<p style="text-align: right;">Page 239</p> <p>1 - JAMES MANNING -</p> <p>2 A. I -- I expect that is correct.</p> <p>3 Q. Did the Secretary ever direct FSA</p> <p>4 that no mire borrower defense decisions should be</p> <p>5 issued?</p> <p>6 A. I never heard her say that.</p> <p>7 Q. Did you ever see any documents that</p> <p>8 -- implying that she make such a decision?</p> <p>9 A. I never -- I don't recall seeing</p> <p>10 anything like that.</p> <p>11 Q. Did anyone ever tell you that she had</p> <p>12 made such a decision?</p> <p>13 A. I don't recall ever hearing that.</p> <p>14 Q. Did you ever hear Secretary DeVos</p> <p>15 express an interest in stopping borrower defense</p> <p>16 decisions?</p> <p>17 MR. MERRITT: Objection, vague.</p> <p>18 Q. Did you ever come to know that the</p> <p>19 Secretary directed that no decisions on borrower</p> <p>20 defense should be issued?</p> <p>21 A. I don't recall ever hearing that.</p> <p>22 Q. As you sit here today, you're not</p> <p>23 aware of Secretary DeVos ever directing that no</p> <p>24 borrower defense decisions be issued by the</p> <p>25 Department?</p>	<p style="text-align: right;">Page 241</p> <p>1 - JAMES MANNING -</p> <p>2 A. I don't have any awareness or</p> <p>3 recollection. No, do not.</p> <p>4 Q. Okay. Now, let's turn back to the</p> <p>5 bottom of Page 3.</p> <p>6 A. Do you mind, could I take two</p> <p>7 minutes.</p> <p>8 MR. JARAMILLO: Oh, I'm sorry, you</p> <p>9 had asked about that earlier. We can go off</p> <p>10 the record.</p> <p>11 THE VIDEOGRAPHER: Off the record.</p> <p>12 The time is 22:09 UTC.</p> <p>13 (Whereupon, there was a brief recess</p> <p>14 in the proceedings.)</p> <p>15 THE VIDEOGRAPHER: We are now on the</p> <p>16 record, the time is 22:22 UTC.</p> <p>17 Q. Mr. Manning, we were looking at Tab 3</p> <p>18 which has been marked as Exhibit 3. That's the</p> <p>19 Inspector General's report and I think when we</p> <p>20 left off, we were at the bottom of Page 3 of the</p> <p>21 report and in a sentence that carried over to Page</p> <p>22 4.</p> <p>23 A. Page 3 -- okay, at the bottom?</p> <p>24 Q. Or if you want to look at the top, it</p> <p>25 would say Page 186 of 270.</p>

<p style="text-align: right;">Page 266</p> <p>1 - JAMES MANNING -</p> <p>2 The response listed here says "We</p> <p>3 agree with this recommendation?"</p> <p>4 Doesn't that signal to you, Mr.</p> <p>5 Manning, that Mr. Johnson is acting -- as COO of</p> <p>6 FSA is agreeing to request approval from you to</p> <p>7 "resume consideration and determination of whether</p> <p>8 additional categories of claims with common facts</p> <p>9 qualify for discharge"?</p> <p>10 A. I don't recall receiving anything</p> <p>11 from Wayne specific to this.</p> <p>12 Q. Okay. Do you recall receiving</p> <p>13 anything from anybody specific to this?</p> <p>14 A. No, I don't recall.</p> <p>15 Q. If can look at Footnote Number 21 at</p> <p>16 the bottom of this Page 34. I'm just going to</p> <p>17 read it. "We want to clarify statement in the</p> <p>18 Report regarding the pause in submitting claims</p> <p>19 for approval and in developing additional</p> <p>20 memoranda for new categories of claims that</p> <p>21 qualify for discharge. Although the Report</p> <p>22 suggests that the Deputy Chief Enforcement Officer</p> <p>23 made a decision to stay this work, we wanted to</p> <p>24 clarify that the Deputy Chief Enforcement Officer</p> <p>25 actually just communicated to the Director of BDU</p>	<p style="text-align: right;">Page 268</p> <p>1 - JAMES MANNING -</p> <p>2 Q. And is it your understanding that</p> <p>3 borrower defense is a matter of policy?</p> <p>4 A. Borrower de -- borrower defense is a</p> <p>5 matter of policy?</p> <p>6 Q. Is that your understanding?</p> <p>7 A. I -- I'm not sure that I -- I</p> <p>8 understand what you mean when you say that.</p> <p>9 Q. Was the Department's policy during</p> <p>10 your tenure at Department of Education to</p> <p>11 implement a -- to have a program for borrowers to</p> <p>12 discharge their federal student loans based on</p> <p>13 borrower defense to repayment policies?</p> <p>14 A. Yes.</p> <p>15 Q. And -- and how was that a matter of</p> <p>16 policy?</p> <p>17 A. I -- I don't understand where you're</p> <p>18 coming from on that.</p> <p>19 Q. That's okay. Earlier we did have a</p> <p>20 discussion, if you'll recall, that the Office of</p> <p>21 the Undersecretary was involved in the policy end</p> <p>22 in -- in creating policy and FSA was involved in</p> <p>23 standard operating procedures and implementing</p> <p>24 policy; is that correct?</p> <p>25 A. Generally, and -- but they -- the</p>
<p style="text-align: right;">Page 267</p> <p>1 - JAMES MANNING -</p> <p>2 the guidance and direction provided by OUS and the</p> <p>3 Review Panel."</p> <p>4 So does that refresh your</p> <p>5 recollection about whether or not OUS provided</p> <p>6 guidance and direction to the BDU to pause</p> <p>7 submitting claims for approval?</p> <p>8 A. The direction provided by OUS to the</p> <p>9 Review Panel.</p> <p>10 Q. And does that refresh your</p> <p>11 recollection about providing the guidance and</p> <p>12 direction?</p> <p>13 A. No, it doesn't.</p> <p>14 Q. Okay. What about providing direction</p> <p>15 for the development of additional memorandum for</p> <p>16 new categories of claims that qualify for</p> <p>17 discharge, does that refresh your recollection</p> <p>18 that the pause --</p> <p>19 A. I don't recall that either. Sorry.</p> <p>20 Q. Borrower defense was part of your</p> <p>21 portfolio in your tenure at the Department as</p> <p>22 Acting Undersecretary, right?</p> <p>23 A. It was housed at FSA, but OUS oversaw</p> <p>24 all of higher education so, yes, borrower defense</p> <p>25 is under it.</p>	<p style="text-align: right;">Page 269</p> <p>1 - JAMES MANNING -</p> <p>2 Office of the Undersecretary during my tenure --</p> <p>3 I'm trying to remember how many staff people were</p> <p>4 there; two or three, the Secretary, young intern.</p> <p>5 The policy work that it would move forward through</p> <p>6 involving, you know, other members, including the</p> <p>7 Office of Postsecondary Education, FSA, the other</p> <p>8 -- those higher education organizations within</p> <p>9 FSA.</p> <p>10 Q. And, and -- and who was in charge of</p> <p>11 the borrower defense policy at the Department?</p> <p>12 A. I think it was shared responsibility.</p> <p>13 Q. Okay. Who -- who shared the</p> <p>14 responsibility?</p> <p>15 A. All the people that were part of the</p> <p>16 borrower defense review team.</p> <p>17 Q. Anybody else?</p> <p>18 A. Well, the head of -- the Acting</p> <p>19 Deputy Secretary. Generally those people.</p> <p>20 Q. Well, the borrower defense review</p> <p>21 team, wouldn't they be part of FSA in -- involved</p> <p>22 in implementing policy rather than establishing</p> <p>23 and creating policy?</p> <p>24 MR. MERRITT: Objection, misstatement</p> <p>25 of prior testimony.</p>

<p style="text-align: right;">Page 270</p> <p>1 - JAMES MANNING -</p> <p>2 Q. Would the Borrower Defense Unit be in</p> <p>3 charge of creating borrower defense policy or</p> <p>4 would that come from somewhere else in the</p> <p>5 Department?</p> <p>6 A. The Borrower Defense Unit at FSA?</p> <p>7 Q. Yes.</p> <p>8 A. Would they be in charge of developing</p> <p>9 policy?</p> <p>10 Q. Correct.</p> <p>11 A. Without oversight?</p> <p>12 Q. Sure, let's start there. I mean, I'm</p> <p>13 -- I think I have an idea what the answer is, but</p> <p>14 I want to hear it from you.</p> <p>15 A. No, they didn't develop their own</p> <p>16 policy.</p> <p>17 Q. Okay. Who developed their policy</p> <p>18 with regard to borrower defense?</p> <p>19 A. I don't recall all the participants</p> <p>20 who were involved.</p> <p>21 Q. Okay.</p> <p>22 MR. MERRITT: (Unintelligible</p> <p>23 crosstalk) the witness mentioned he was</p> <p>24 tired, so I mean we can go off the record if</p> <p>25 you want to, but I just want to ask for a</p>	<p style="text-align: right;">Page 272</p> <p>1 - JAMES MANNING -</p> <p>2 ask you a few more questions and then we'll</p> <p>3 take the break and then we'll get a time</p> <p>4 check and wrap up.</p> <p>5 THE VIDEOGRAPHER: The time --</p> <p>6 THE WITNESS: You know what, if we're</p> <p>7 going to do it that way, let me go ahead and</p> <p>8 just take a -- a break now and let's get back</p> <p>9 and finish it up.</p> <p>10 MR. JARAMILLO: Okay, fine. Off the</p> <p>11 record.</p> <p>12 THE WITNESS: Thank you.</p> <p>13 THE VIDEOGRAPHER: And the time is</p> <p>14 23:09 UTC.</p> <p>15 (Whereupon, there was a brief recess</p> <p>16 in the proceedings.)</p> <p>17 THE VIDEOGRAPHER: We're now on the</p> <p>18 record. The time is 23:17 UTC.</p> <p>19 Q. So, Mr. Manning, we were talking</p> <p>20 about pol -- policy decisions at the Department</p> <p>21 regarding borrower discharge and I would like to</p> <p>22 know: If there was a policy to delay issuing</p> <p>23 borrower defense decisions for an extended period</p> <p>24 of time, who is the person responsible in the</p> <p>25 Department for making such a decision or who would</p>
<p style="text-align: right;">Page 271</p> <p>1 - JAMES MANNING -</p> <p>2 time check and maybe a break.</p> <p>3 MR. JARAMILLO: Let's -- let's -- I</p> <p>4 mean, if you don't mind, just a couple more</p> <p>5 questions on this topic and then we can do</p> <p>6 that. If that -- unless -- Mr. Manning, are</p> <p>7 you requesting a break right now or can you</p> <p>8 bear with a couple more annoying questions?</p> <p>9 MR. MERRITT: Okay.</p> <p>10 THE WITNESS: You're just doing your</p> <p>11 job. How -- how much longer are we going to</p> <p>12 go?</p> <p>13 MR. JARAMILLO: Well, I have a few</p> <p>14 more questions on this topic and then we</p> <p>15 might not have that much time left, but with</p> <p>16 the time left I do have some other things I</p> <p>17 wanted to cover relatively quickly.</p> <p>18 THE WITNESS: Go ahead. What were</p> <p>19 you saying?</p> <p>20 MR. JARAMILLO: So can I ask you a</p> <p>21 few more questions or do you want to take a</p> <p>22 break now?</p> <p>23 THE WITNESS: Well, let's power</p> <p>24 through it because I --</p> <p>25 MR. JARAMILLO: All right. Let me</p>	<p style="text-align: right;">Page 273</p> <p>1 - JAMES MANNING -</p> <p>2 be, to your experience? Who?</p> <p>3 A. I'm thinking. I just -- you know --</p> <p>4 who would be the person responsible for</p> <p>5 recommending a decision like that?</p> <p>6 Q. And for making a decision like that.</p> <p>7 A. Well, responsible or have the</p> <p>8 authority or -- I mean --</p> <p>9 Q. Okay, let's -- who would have the</p> <p>10 authority to make a decision like that?</p> <p>11 A. Well, it depends on what the policy</p> <p>12 is you're talking about.</p> <p>13 Are you talking about real policy or</p> <p>14 policy changes, then that was the purpose of us</p> <p>15 reopening the negotiated rulemaking in November,</p> <p>16 2017.</p> <p>17 Q. Okay, let's -- I don't want to talk</p> <p>18 about the administrative policy that required, you</p> <p>19 know, publication and notice.</p> <p>20 I want to talk about an internal</p> <p>21 Department policy about how to handle borrower</p> <p>22 discharge claims and specifically a policy or</p> <p>23 decision that would call for not reviewing -- I</p> <p>24 mean, strike that -- not issuing decisions on</p> <p>25 borrower defense claims.</p>